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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

AUG 11 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

MOONBEAM, INC.

GARY E. WILLSON

For a Construction Permit
New FM Station on Channel 265A
in Calistoga, California

MM DOCKET NO. 93-42

File No. BPH-911115MG

File No. BPH-911115MO

TO: The Honorable Edward Luton
Administrative Law Judge

**REPLY TO OPPOSITION TO
THIRD PETITION TO ENLARGE**

A. Wray Fitch III
Counsel for Gary E. Willson

GAMMON & GRANGE, P.C.
8280 Greensboro Drive
Seventh Floor
McLean, VA 22102-3807
(703) 761-5000

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SUMMARY

Willson has presented an ongoing pattern of misrepresentations and lack of candor by Moonbeam. This is not a case of one inadvertent error but of multiple material misstatements with accompanying motives.

Ms. Constant affirmatively stated she resided in Santa Rosa, a community she never lived in. She made the assertion during the time there were ongoing settlement negotiations and at a time when she knew local residence could help her in those negotiations.

She affirmatively testified at her deposition that her husband had no involvement in her application nor she in his business affairs. It turns out that neither statement is true. Mr. Constant is a permittee in a station in Idaho, has owned many stations in the past and has broadcast experience, whereas, Ms. Constant has none. There is a strong motive to misrepresent the separateness of the two in order to avoid attribution of the Idaho station and possible real-party-in interest issues.

Moonbeam failed to report the broadcast interest of Mr. Constant in an FM station in Idaho. This station is an attributable interest and may have a significant impact on the comparative posture of the Moonbeam application.

Moonbeam portrayed Mary Constant's involvement in the Calistoga Performing Arts Association as active and ongoing when the Calistoga Performing Arts Association was at the time defunct.

Ms. Constant affirmatively stated during her deposition that the main studio would be located outside the city grade contour. She now claims that this will be an auxiliary studio although no funds have been earmarked for such a studio and Moonbeam amended its site in part to benefit from the available KFTY studio space available outside the city grade contour in Santa Rosa.

Lastly, despite previous questions raised concerning Ms. Constant's so-called employment with James Warren & Sons (Realtors) Company in Calistoga, Mary Constant knowingly affirmatively stated in direct case exhibits and at hearing that she was a presently licensed real estate agent when her license had already been suspended for weeks. The motive to portray this active involvement was to convey a stronger affiliation with the service area.

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Gary E. Willson (Willson) files this reply to Moonbeam, Inc.'s "Opposition to Third Petition to Enlarge." Willson seeks addition of misrepresentation and ineptness/carelessness issues. Moonbeam, for the most part, trivializes Willson's allegations as "misleading and frivolous," and "based on ambiguities, non-statements and trivial errors." Willson's reply will underscore both the factual basis for his allegations, as well as Commission precedent which compels consideration of the allegations made by Willson as material harbingers of Ms. Constant's veracity and her qualifications to be an FCC licensee.

1. The Idaho Station.

First, Moonbeam asserts that the acquisition of a construction permit in Idaho by Mr. Constant is irrelevant. Moonbeam claims it was not required to report the acquisition of this broadcast interest and, therefore, that there could be no intent to conceal this interest by Ms. Constant. Moonbeam goes on to

note, "In short, Willson has egregiously sought to deceive the Presiding Officer and, indeed, the Commission regarding the need to enlarge issues in this case." Opp. at ¶11.

Moonbeam's argument is curious. On July 21, 1993, after Willson raised the issue, Moonbeam filed a Petition for Leave to Amend to report Fred Constant's acquisition of the Idaho station. In its Petition for Leave to Amend, Moonbeam stated that, "Due to an unintentional administrative oversight, this change was not formally reported to the Commission by Moonbeam. Moonbeam's oversight became apparent from Gary Willson's July 8, 1993 Third Petition to Enlarge Issues." Moonbeam also noted, "Section 1.65 of the Commission's rules requires an applicant to report this change." Id. at ¶3. Indeed it does. Commission Rule 1.65 requires an applicant, within 30 days, to report any change or new information whenever the pending application is no longer substantially accurate, or "whenever there has been a substantial change as to any other matter which may be of decisional significance in the Commission proceeding involving the pending application"

The acquisition of a media interest by a spouse is clearly of decisional significance in a Commission proceeding. The doctrine of spousal attribution for purposes of diversification in comparative broadcast proceedings firmly provides that there is a rebuttable presumption that the media interests of one spouse will be attributed to the other. Richard P. Bott, 4 FCC Rcd. 4924, 4926 (Rev. Bd. 1989).

In any event, contrary to Moonbeam's argument in its Opposition, the 301 application itself requires that the media interests of a spouse be reported. As noted by the Commission,

Under existing policy, applicants for new construction permits and for transfers or assignments of licenses are required to report the broadcast interests of all immediate family members (parents, siblings and offsprings, as well as spouses) of any party to the application. In addition, applicants must file exhibits to these applications which provide full disclosure regarding the nature and extent of such familial interests. (Emphasis added).

Policy Statement on Spousal Attribution, 7 FCC Rcd. 1920 at ¶15 (March 9, 1992).

Moonbeam's motive for failure to disclose Mr. Constant's broadcast interests is readily apparent. Even a slight diversification demerit in a close comparative proceeding such as this can be determinative.

2. Ms. Constant's Residence.

Moonbeam next claims that it corrected information it admits was inaccurate concerning Ms. Constant's purported residence in Santa Rosa within the 1 mV contour. Moonbeam argues that since the error was corrected, there can ipso facto be no intent to misrepresent. The motive to misrepresent was affirmed at hearing when Ms. Constant said she was aware that local residency was a comparative enhancement and that such an enhancement would assist in settlement negotiations. In fact, Willson and Moonbeam were involved in settlement discussions long before the error was "corrected" and during a time when both the Commission and Willson were misled to believe that Ms. Constant was entitled to past local area residency credit. Ms. Constant was well aware of

the process, having recently completed settlement negotiations involving her Eagle application in Idaho. She was aware that the various comparative strengths of an applicant were bargaining chips. Ex. 1, pp. 65, 66, 67. One of those chips was past local residence.

Ms. Constant testified that she was well aware of the need for accuracy with the Commission. Ex. 1, pp. 37, 38. Ms. Constant was a resident of Petaluma during the time at issue. Ex. 1, p. 70. She testified at hearing that she now knows Petaluma is outside the service area. Ex. 1, p. 71. At the time the application was filed, she wasn't sure Petaluma was in the service area and couldn't affirmatively explain why she claimed to be a service area resident. Ex. 1, pp. 71-72. Far more damaging is that Ms. Constant reported that she was a resident of Santa Rosa where she never lived. It is difficult to comprehend how Ms. Constant would not have known something as fundamental as the location of her residence for a 2-year period and then affirmatively misstate the location of her residence in a way that benefitted her application.

The misleading evidence was not corrected for over a year and even then no affirmative correction was made. Moonbeam merely dropped any reference to past local residence in its integration and diversification statement.

3. Involvement in Mr. Constant's Business Affairs.

Next, Moonbeam accuses Willson of "outrageously distort[ing] both the questions Ms. Constant was asked and the answers she gave" concerning any involvement by Ms. Constant in MegaMedia (a company owned by her husband), involvement in her husband's

station, or concerning financial difficulties involving her husband's stations. Ms. Constant was asked during her deposition:

Q: Did you have any involvement with your husband's stations?

A: None.

Willson Third Petition, Ex. 1, pp. 58, 95.

She was further asked:

Q: Are you aware of a company called MegaMedia?

A: Yes.

Q: Did you ever have any involvement with that company?

A: I had no involvement with that company.

Willson Third Petition, Ex. 1, p. 92.

She was also asked:

Q: What kind of contact, if any, have you had or involvement have you had with your husband's stations in the past?

A: I have had no involvement with my husband's station.

Q: Alright. And those stations, your husband's stations, got in some financial trouble, didn't they?

A: I am not -- I don't have information about the --

Willson Third Petition, Ex. 1, p. 95.

First, with respect to the involvement in her husband's stations, or for that matter, the financial difficulties involving those stations, Willson submitted a declaration of Mary F. Constant dated May 19, 1989. The declaration was submitted in conjunction with ongoing litigation involving loans to four corporations owned by her husband. The GlenFed loans totalling \$2,900,000 were to Fred Constant's corporations involved in

broadcasting, and it is clear that the stations were in financial difficulty. See Ex. 2 and Willson's Third Petition, Ex. 5.

Ms. Constant was also involved in MegaMedia, another of her husband's businesses. She was ordered to appear and be examined in an effort to locate any available assets to satisfy an outstanding judgment against MegaMedia Worldwide and Frederic W. Constant. Also, according to the hearing testimony of Lizbeth Ann Roper, a witness in the litigation involving MegaMedia, both Fred Constant and Mary Constant were involved in a long phone call with the witness prior to the hearing. According to Ms. Roper, both Mr. and Mrs. Constant were on the line and both seemed to be very concerned about the fact that she was to testify at the upcoming trial. Ms. Roper testified that they "clearly did not want me to do so." Willson Third Petition, Ex. 6, p. 85. Ms. Roper then testified that she was told that if she did testify, Mr. Constant would create problems for her. Id. at p. 85.

It is quite evident that Ms. Constant was very much involved with MegaMedia, to the point of being concerned with the upcoming trial. Yet Ms. Constant, throughout her deposition, attempted to maintain the appearance of complete separation between herself and her husband, to the point of claiming she did not even discuss her application with her husband. These demonstrated contacts with Mr. Constant's businesses involved litigation which, as noted by Moonbeam is, "an extraordinary event in the lives of nonlawyers." These involvements should have been well-remembered, therefore, by Mary Constant. There was, however, a

strong motive to distance herself from her husband and her husband's businesses. Mr. Constant has owned and operated many radio stations in the past, whereas Ms. Constant has no broadcast experience and has never owned any media interests. Any connection with Fred Constant would undermine any effort to rebut attribution of Mr. Constant's Idaho station. It might also well raise real party in interest issues.

**4. Mr. Constant's Involvement
in the Calistoga Application.**

Along the same lines, Ms. Constant was adamant during her deposition that her husband had no involvement in her application. Willson has presented evidence that her husband was present at a settlement meeting in Washington, D.C., and that her husband also phoned Mr. Willson directly to discuss settlement. Moonbeam does not dispute this evidence. It argues that it should not be considered and that evidence regarding settlement is not admissible under the Commission's rules. The issue is not the substance of the settlement discussions, but the fact Mr. Constant was involved. The Commission has always considered the degree of involvement of an individual in settlement as relevant to the standard comparative issue. In Rayne Broadcasting Company, Inc., 5 FCC Rcd. 3350 (Rev. Bd. 1990), the Review Board considered a husband's participation in settlement negotiations involving his wife's application. Not only was the husband's participation in settlement negotiations considered, but that factor, as well as several others, resulted in a remand to determine whether the husband was the real party in interest.

Although Willson could have said much more than he did, he has presented evidence which reflects only on Mr. Constant's involvement and not on the specifics of any settlement, terms or discussions. Willson also further notes that Mary Constant's hearing testimony further underscored her husband's involvement in her application -- testimony again directly at odds with her deposition testimony. They both talked about the desire to have the station and move to Calistoga. Ex. 1, p. 61. She discussed with her husband using Mr. Shubert as FCC counsel and Mr. Klein as engineering counsel, both of whom have performed services for her husband. Ex. 1, pp. 59, 60. Mary Constant discussed with her husband his call to Willson and she further confirmed that there was nothing inaccurate in Willson's statement regarding Mr. Constant's involvement in settlement. Ex. 1, pp. 93 and 96. She has also discussed her transmitter site with her husband. Ex. 1, p. 134.

5. Main Studio.

Moonbeam asserts that the intended location of its main studio is in the proposed 3.16 mV contour of the station as specified in its application as amended on March 2, 1992. Moonbeam states that Ms. Constant, "as a result of anxiety, testified incorrectly," that the main studio would be co-located with the studios of KFTY in Santa Rosa. At hearing, Ms. Constant testified that she had made a mistake during her deposition testimony and that she intended to locate an auxiliary studio in KFTY's offices in Santa Rosa. See Ex. 1, p. 86. But she then testified that she would not have said what she said about the

location of her main studio in Santa Rosa during depositions if it was not true. Ex. 1, p. 89. There are also other troubling questions concerning her actual intended studio location. It appears that the reason Moonbeam amended its application on March 2 to the KFTY site was due to the availability of KFTY offices in Santa Rosa. See Willson Third Petition, Ex. 1, pp. 71, 113. Also, Moonbeam claims that the Santa Rosa studio is to be an auxiliary studio, but there is no provision in Moonbeam's cost estimates for an auxiliary studio. See Ex. 3.

Contrary to Moonbeam's assertions, there is a motive to misrepresent the intended location of the main studio. If Moonbeam were to request a waiver of the Commission's main studio rule during the course of comparative hearing, such a waiver would likely be denied and, as a result, its application denied. Requesting such a waiver, however, after grant of its application would, at most, result in denial of the requested waiver but not in dismissal or denial of the application and construction permit.

6. Civic Activity.

Mary Constant claimed credit for civic involvement in the Calistoga Performing Art Association (CPAA) in Moonbeam's March 2 amendment and again in its Integration and Diversification Statement. It was described as an ongoing involvement although it turns out the CPAA went defunct in the summer of 1992. See Willson Third Petition Ex. 1, p. 50. Moonbeam asserts that in essence it told a true story in its direct case exhibits. This, however, was only after Willson adduced the true state of affairs

of the CPAA during Ms. Constant's deposition--weeks before Moonbeam filed its direct case exhibits. The failure to voluntarily correct Mary Constant's true involvement in the CPAA before it was discovered by Willson during depositions is particularly troubling since Willson had already earlier raised other significant errors in Moonbeam's March 2 amendment and Integration and Diversification Statement relating to Mary Constant's purported local residence.

7. The Suspended License.

One of the best illustrations of Moonbeam's cavalier attitude and lack of candor is its response to Ms. Constant's suspended real estate license. Despite Ms. Constant's testimony at hearing of the acknowledged need to be accurate and truthful with the Commission, and despite the earlier focus on Ms. Constant's so-called "employment" with James Warren & Sons, Moonbeam asserts, "There existed no need to disclose the suspension [of the license] to the Commission at any time." Opp. at ¶31. Moonbeam claims, "Ms. Constant has never represented that she was a full-time realtor by profession or that she derived income from her real estate activities; the position denoted her involvement with the Calistoga community." Opp. at ¶29. At hearing though, she testified, "I am an active realtor there [in Calistoga]." Ex. 1, p. 148. She testified she functioned as a realtor showing property in the area. Ex. 1, p. 149. In Moonbeam's March 2, 1992 amendment and Integration and Diversification Statement, Ms. Constant claims, "As of February

25, 1992, Ms. Constant has become employed as an associate real estate agent for James Warren & Sons (Realtors), 414 Main Street, St. Helena, California."

In its direct case, Moonbeam asserts, "Ms. Constant is presently licensed as a realtor in California. James E. Warren & Sons (Realtors), 414 Main Street, St. Helena, California, holds her license as an associate realtor." Moonbeam makes this assertion despite the fact Ms. Constant's license had been suspended since May 23, 1993. Not only that, Ms. Constant was aware for weeks before her direct case was filed that her license had been suspended. Ex. 1, pp. 153 and 154.

Moonbeam's portrayal of Ms. Constant as employed within the service area demonstrates an ongoing lack of candor by exaggerating her connection with Calistoga by implying that she was employed and active in the real estate business when she was not. A realtor with a suspended license cannot engage in the business of real estate, otherwise such suspension would be meaningless. To say that the suspension of Ms. Constant's license is in no way material is wishful thinking. Such an assertion would be comparable to a lawyer claiming that suspension of his license to practice has nothing to do with the ability to practice law. It is core information at the heart of any assertion Ms. Constant has made concerning her real estate activities and "employment" in Calistoga. The motive for exaggeration and lack of candor concerning Ms. Constant's so-called employment with James A. Warren & Sons is to bolster her connection with Calistoga. Ms. Constant testified that the

purpose of noting the connection with James Warren & Sons Realtors is because it is located within the 1 mV contour of her proposed station. Ex. 1, p. 148.

* * * * *

Moonbeam's multiple misrepresentations and lack of candor warrant the issues requested. Once the rhetoric and ad hominum attacks are set aside, the facts reveal more than enough compelling evidence to add the issues requested.¹ A quick review of and response to Moonbeam's summary paragraph 33 will in a summary way demonstrate this best. Moonbeam states, "In any event, what has Willson proved? Not much." Moonbeam then makes the following points:

- (1) Moonbeam untimely reported a spousal broadcast interest that Moonbeam has no legal obligation to report.

Moonbeam, after the issue was raised by Willson, itself petitioned for leave to amend to report the broadcast interest, citing its obligation pursuant to Rule 1.65. Indeed, Moonbeam states that the only reason it failed to amend was "oversight." Rule 1.65 requires reporting a spousal interest since it is a

¹ Willson declines to respond in kind to Moonbeam's ad hominum attack on Mr. Gammon. Moonbeam alludes in paragraph 6 to what it calls a strategy of litigation over trivia employed by Mr. Gammon in Garrett Andrews and Letizia, Inc., 86 FCC2d 1172 (Rev. Bd. 1981). First, Mr. Gammon did not file the Third Petition to Enlarge, and his so-called "strategy" in Garrett, Andrews and Letizia is irrelevant to this proceeding assuming a strategy can even be discerned from a 12-year-old case. Secondly, the facts in Garrett, Andrews and Letizia are notably different. See note 3. Thirdly, the Commission has, in a series of recent cases, added misrepresentation issues on what Moonbeam would undoubtedly call "trivia" that is far less compelling than the issues here. See Willson's Third Petition at 7, 8.

matter which clearly has a material affect on the application. Finally, the FCC itself interprets FCC Form 301 to require applicants to report all spousal broadcast interests. The motive for concealing is readily apparent.

- (2) **Moonbeam overlooked an error concerning local residence which Moonbeam spontaneously corrected when Ms. Constant noticed the error 3 months ago.**

First, there was never any affirmative correction. The misrepresentation was simply not repeated again. Also, the alleged error involved a factor as basic as past residence, and the error remained uncorrected during a time when parties were attempting to settle this proceeding and during a time when Ms. Constant was well aware that comparative pluses would help her negotiating posture. Both Willson and the Commission were under the mistaken belief that Ms. Constant was a past local resident of Santa Rosa for over a year. Ms. Constant was well aware of the need to be accurate in her application. Yet, she claimed to have resided in a town she never lived in. Ex. 1, p. 12.

- (3) **Ms. Constant was not involved in her husband's businesses since Ms. Constant merely testified regarding spousal consent and post-judgment discovery involving a personal suit against Mr. Constant resulting from business activities and Ms. Constant was simply on the line with her husband during a phone call to a witness.**

The fact is Ms. Constant specifically stated she had no involvement with MegaMedia despite the fact she had directly participated with her husband in an effort to persuade a witness not to testify in litigation involving MegaMedia. She submitted a declaration which demonstrated not only knowledge of the precarious financial condition of her husband's broadcast

businesses, but demonstrated direct financial involvement with those businesses.

- (4) Ms. Constant corrected her testimony about the proposed main studio location.

The fact is that correcting testimony after an issue is raised is self-serving and does not change testimony given. At hearing, Ms. Constant testified that she would not have testified during her deposition the way she did if it was not true. Although Moonbeam now claims that the Santa Rosa KFTY studio site is intended as an auxiliary studio only, there are no cost provisions for such a studio.

- (5) Moonbeam corrected in its direct case exhibits misleading information about Ms. Constant's continued involvement in the Calistoga Performing Arts Association.

This matter was corrected only after Willson discovered Ms. Constant's true involvement during her deposition.

- (6) Mr. Constant only attended one settlement meeting and made a single phone call to Mr. Willson regarding settlement.

The fact is Ms. Constant demonstrated incredible evasiveness concerning her husband's involvement in her application during depositions, and then testified that he had no involvement. It turns out that not only was Mr. Constant directly involved in settlement on two occasions -- once by phoning Mr. Willson, but that Ms. Constant also discussed numerous other aspects of the application with her husband. Her testimony at deposition was untruthful. She had a strong motive to separate herself from her husband in order to avoid spousal attribution and real party in

interest concerns in light of her husband's past extensive broadcast experience and current ownership interest.

- (7) Ms. Constant's real estate license has been temporarily, administratively suspended for failure to take a brief continuing education course.

Moonbeam has, since the beginning, attempted to portray substantial involvement by Ms. Constant in Calistoga through her employment with James Warren & Sons (Realtors). It turns out that there is minimal contact of, at most, several hours one day a week. Now it turns out that since May 23, 1993, when Ms. Constant's real estate license was suspended, she has by virtue of suspension of her license been prohibited from any involvement as the agent she purports to be. Ms. Constant further affirmatively stated in her direct case exhibit that she was a licensed real estate agent, although she knew weeks beforehand that her license had been suspended.

* * * * *

These misrepresentations and Ms. Constant's demonstrated lack of candor cannot be equated with a single instance of inadvertent error which can be explained away. Moonbeam has already had that benefit. In response to Willson's First Petition to Enlarge Issues, Ms. Constant claimed she inadvertently erred when she stated Sonoma State University was located in Santa Rosa when it was not. Moonbeam has demonstrated since then an ongoing pattern of misrepresentations and lack of candor.

Moonbeam cites dated precedent which is either inapplicable

or has been overtaken by recent Commission precedent² requires a

² Moonbeam cites Garrett, Andrews and Letizia, Inc., 86 FCC 2d 1172 (Rev. Bd. 1981). This is a 12-year-old case where the Review Board declined to add an issue to explore misrepresentations involving local residence and the availability of the proposed main studio site. The Review Board concluded the applicant had been a resident as stated in the application and that zoning concerns relating the availability of the main studio site were conjectural. The Board also concluded there was no motive to misrepresent local residence since the applicant had a clear quantitative integration advantage. Despite this, one of the Board members concluded, "I think that the statement in the Ferraro application that Boulder City was the residence (home) of the Ferraros raises a serious question of purposeful misrepresentation ...". Here, Moonbeam's circumstances are dramatically different. Here past local residence and the intended location of the main studio are but two of at least seven misrepresentations and/or lack of candor demonstrated by Moonbeam. Ms. Constant, moreover, was never a resident within the service area as claimed. Finally, there is a motive to misrepresent on all these issues since this is a close comparative proceeding where both parties propose a 100 percent integration. Next, Moonbeam cites the 11-year-old Central Texas Broadcasting, Ltd., 92 FCC2d 914 (Rev. Bd. 1982) case and Ramon Rodriguez and Associates, Inc., 7 FCC Rcd. 2633 (1992) for the proposition that the intent to deceive or conceal is at the heart of misrepresentation cases. Willson agrees. Since rarely will anyone admit that there is an intent to deceive or conceal the intent is derived from facts and motive. See California Public Broadcasting Forum, 752 F2d at 679 ("intent is a factual question that, like other factual questions, can be found from evidence affording a reasonable inference"). Willson has articulated Moonbeam's motive in every case. Willson notes that in Ramon Rodriguez the Commission concluded the failure to disclose loss of the site was not merely a mistake and added multiple issues. Finally, Moonbeam cites International Radio, Inc., 98 FCC2d 608, 639 (Rev. Bd. 1984) for the proposition that it is difficult to derive an intent to misrepresent after placing in the hands of competitors documentation setting forth the accurate facts. This was a renewal proceeding involving inaccurate news programming logs in a situation where although inaccurate information was submitted, accurate information concerning the same data was also available. Moonbeam, however, failed to correct any misrepresentations or corrected them only after the matter was discovered by Willson. The Commission routinely adds issues under such circumstances. See Capital City Broadcasting Company, ___ FCC Rcd. ___ (Rev. Bd., released March 11, 1993). One exception is possibly the issue involving Ms. Constant's purported local residence. Even there, however, Willson and the Commission were misled to believe for a one year period that Ms. Constant had been a past service area resident.

thorough and complete airing where there have been allegations of misrepresentation or lack of candor. Indeed, the Commission has recently noted, "Although the Commission in some circumstances has shown leniency toward applicants that have been less than candid, more recently, 'the Commission's demand for absolute candor [has][itself] been all but absolute.'" Emission de Radio Balmeseda Company, Inc., 7 FCC Rcd. 3852, 3588 (Rev. Bd. 1992); see also Frank Digesu, 7 FCC Rcd. 5459 (1992); Gulf Breeze Broadcasting Company, ___ FCC Rcd. ___ (Rev. Bd. March 18, 1993); Maria M. Ochoa, 7 FCC Rcd. 6569 (Rev. Bd. October 13, 1992); Raymond J. and Jean Marie Strong, 6 FCC Rcd. 5321 (Rev. Bd. 1991); and Weyburn Broadcasting Limited Partnership v. FCC, 91-1383, 71 RR2d 1386 (D.C. Cir. 1993); Richardson Broadcast Group, 7 FCC Rcd. 1583 (1992) -- all discussed in Willson's Third Petition to Enlarge Issues at pages 7-8.

The Commission expects absolute candor on the part of Commission licenses and applicants. Catoctin Broadcasting Corp. of New York, 2 FCC Rcd. 2126 (1987). Because of its limited resources, the Commission relies of necessity upon the representations of its licensees to determine regulatory compliance. Tri-State Broadcasting Company, Inc., 5 FCC Rcd. 1156, 1173 (1990). It is for this reason that Moonbeam's ongoing pattern of misrepresentations and lack of candor are significant.

Moonbeam's effort to rectify the error was not an affirmative acknowledgement but a silent choice of merely deleting the reference to local residence in the integration and diversification statement.

8. Timeliness.

Moonbeam argues, as it has in response to every petition filed by Willson, that the petition is untimely. The petition was timely filed within 15 days of receipt of the June 4, 1993 deposition transcript. Ms. Constant's deposition testimony is the backbone of Willson's petition and it is thus timely filed. Nonetheless, Moonbeam scours the record and argues there are three facts of the very many presented by Willson, that Willson could have discovered earlier. Consequently, Moonbeam argues the allegations premised on these three facts should be stricken as untimely. The first fact is the location of Sonoma State University. This was a fact known by Willson prior to the deposition. However, there is no rule foreclosing use of prior known facts in conjunction with a great deal of newly-discovered evidence. In that regard, Willson discovered only during deposition the extent, duration and location of Ms. Constant's non-service area residence, as well as facts concerning her attendance at Sonoma State University.

Moonbeam next claims that Willson could have discovered the discontinuation on the Calistoga Performing Arts Association. The issue here, however, is not only the discontinuation of the CPAA, but Ms. Constant's lack of involvement. That information was and could only realistically be discovered from deposing Ms. Constant. Lastly, Moonbeam references Ms. Constant's "correction" of her past residence in Santa Rosa in its integration statement. As noted above, there was additional,

integral information discovered at Ms. Constant's deposition directly relating to her past local residence.

In sum, Moonbeam's untimeliness argument should be rejected.

9. Discovery.

Willson has only requested three categories of documents. Moonbeam objects to all Willson's discovery requests, but Moonbeam has made no specific objection to Document Request No. 3. Moonbeam objects to Willson's Document Request No. 1 seeking "all documents relating to Moonbeam's proposed main studio." Moonbeam claims only documents regarding location of the studio should be produced. Moonbeam's proposed limitation is overly restrictive. It could well be that documents not referencing a location are indicative of where Moonbeam might construct or intends to construct its studio. For example, KFTY may have offered without specifying a location, to make free studio space available on the condition that its tower site is leased. This would clearly have a bearing on where Moonbeam intends to house its studio.

Moonbeam also objects to Willson's Second Request calling for production of "all documents relating to any involvement or interest of Mary Constant in any past or current broadcast or media related business of her husband, Fred Constant within the past 5 years." This request is clearly relevant and properly limited in scope. Willson has presented evidence, contrary to Ms. Constant's claims, that she has been involved in her husband's media interests.

Finally, Moonbeam opposes Willson's stated intention to depose Mr. Constant. Mr. Constant's testimony is directly relevant in any involvement that his wife had in his business as well as the degree of his involvement in his wife's Calistoga application. Both of these issues are the subject of Willson's Petition.

10. Conclusion.

Willson has presented an ongoing pattern of misrepresentations and lack of candor by Moonbeam. This is not a case of one inadvertent error but of multiple material misstatements with accompanying motives.

Ms. Constant affirmatively stated she resided in Santa Rosa, a community she never lived in. She made the assertion during the time there were ongoing settlement negotiations and at a time when she knew local residence could help her in those negotiations.

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Lastly, despite previous questions raised concerning Ms. Constant's so-called employment with James Warren & Sons (Realtors) Company in Calistoga, Mary Constant knowingly affirmatively stated in direct case exhibits and at hearing that she was a presently licensed real estate agent when her license had already been suspended for weeks. The motive to portray this active involvement was to convey a stronger affiliation with the service area.